Questions N° 4.

Digest

2. Paley. 286.

The noblest End of criminal Jurisdiction is to prevent ~~[illegible]~~ Crimes: Their Punishment is considered as a necessary Means for the Accomplishment of this noble End. The well grounded Apprehension that the Impunity of a Criminal would encourage him to repeat the same ~~[illegible]~~ or to commit other ~~[illegible]~~ Offences; and that those, who are Witnesses of his Impunity would become his Disciples in his Crimes is the strongest — some — view ~~[illegible]~~ it as the sole — Consideration, which authorises the Infliction of Punishment by human Laws.

There are two Qualities in Punishments, which are calculated to render them fit Preventatives of Crimes. The first is their Moderation ~~[illegible]~~: The second is their Certainty. Of those two Qualities, the last has the most powerful as well as the most perceptible Operation. Criminals do not so much flatter themselves with the Lenity of the Sentence which will be pronounced against them, as with the Hope of being able, in some Way or other, to avoid its Execution. They are not much disposed to balance the Gain, which they will acquire by the Crime with the Pain or Loss, which they will suffer by the Punishment: They are rather

rather inclined to calculate and to act upon the Calculation of the Chances, which may happen in their Favour from Concealment, from Flight, and from Pardon. The Number of these Chances is but diminished by Accuracy in the public Police, by Vigilance and Activity in the executive Officers of Justice, by a prompt and certain Communication of Intelligence, by a proper Distribution of Rewards for the Discovery and Apprehension of Criminals, and, when they are apprehended, by an undeviating and inflexible Strictness in carrying the Laws against them into sure and full Execution.

All this will be readily allowed: If it is; the following Question naturally occurs — What would we think of a legal or constitutional Power to dispense with Accuracy in the public Police, or with Vigilance Vigour and Activity in the Search and Seizure of Offenders? Such a Power, it must be admitted, would seem somewhat extraordinary. What, it will next be asked, would we think of a legal or constitutional Power to dispense with the Execution of the Laws against

A.

The strict Execution of every unrepealed Law is the Dictate both of Wisdom and Mercy.

against Criminals after they have been apprehended, tried, convicted and adjudged to the Doom ~~pro~~ denounced against them by the Laws? In other Words; can the Power to pardon be admissible into any well-regulated Government? Shall a Power be given to insult the Laws, to protect Crimes, to indemnify, and, by indemnifying, to encourage Criminals?

From this ~~A~~ or from a similar View of Things, many Writers, and some of them very respectable as well as humane, have been induced to conclude, that, in a Government of Laws, the Power of pardoning should be altogether unknown.

Would you prevent Crimes? says the Marquis of Beccaria; Let the Laws be clear and simple: Let the entire Force of the Nation be united in their Defence: Let the Laws, and the Laws only be feared. The Fear of the Laws is salutary; but the Fear of Man is a fruitful and a fatal Source of Crimes. Happy the Nation, in which Pardons will be considered as dangerous! Ele-

+ Bec. c. 61. 46.

mency is a Virtue, which belongs to the Legislator, and not to the Executor of the Laws; a Virtue, which should shine in the Code, and not in private Judgment. The Prince, in pardoning, gives up the public Security in Favour of an Individual; and, by his ill-judged Benevolence, proclaims an Act of Impunity.

With Regard, says Rousseau, to the Prerogative of granting Pardon to Criminals, condemned by the Laws of their Country, and sentenced by the Judges, it belongs only to that Power, which is superior both to the Judges and the Laws, to wit, the sovereign Authority. Not that it is very clear that even the supreme Power is vested with such a Right, or that the Circumstances, in which it might be exerted, are frequent or determinate. In a well governed State, there are but few Executions; not because there are many pardoned; but because

there

+ Or. Com. 54.

" Mont. b. 3. c. 10.

= Pope.

there are few Criminals. Under the Roman Republic, neither the Senate nor the Consuls ever attempted to grant Pardons: Even the People never did this, although they sometimes recalled their own Sentence.

In Persia, when the King has condemned a Person, it is no longer lawful to mention his Name, or to intercede in his Favour. Though his Majesty were drunk and beside himself, yet the Decree must be executed; otherwise he would contradict himself, and the Law admits of no Contradiction".

Extremes ~~in Politics~~ in Nature, equal Ends produce. So in Politics, as it would seem.

The more general Opinion, however is, that, in a State, there ought to be a Power of pardoning Offences.

~~But [illegible]~~

The Exclusion of Pardons, says Sir William Blackstone, must necessarily introduce a very dangerous Power in the Judge or Jury, that of construing the criminal Law by the Spirit

" L. Bl. 390

+ L. R. 846.

Spirit instead of the Letter; or else it must be holden, what no Man will seriously avow, that the Situation and Circumstances of the Offender (though they alter not the Essence of the Crime) ought to make no Distinction in the Punishment.

I cannot, upon this Occasion, enter into a Discussion of the great Point suggested and decided, in a very few Words, by the learned Author of the Commentaries — that Judges and Juries have no Power of construing the criminal Law by the Spirit instead of the Letter. But I cannot, upon any Occasion, suffer it to pass under my Notice, without entering my Caveat against my implicit Submission to that Decision. I know well the humane Rule, that in the Construction of a penal Law, neither Judges nor Jury can extend it to Facts equally criminal to those specified in the Letter, if they are not contained in the Letter. But I profess myself totally ignorant

of

+ Str. 520

of any Rule — I think it would be an inhumane one — that the Letter of a penal Law may be carried beyond the Spirit of it; and it may certainly be carried by the Letter beyond the Spirit, if Judges and Jurors are prohibited, in construing it, from considering the Spirit as well as the Letter. ~~But this~~ ~~is to be exempted subject~~. Though the Words of a Law, says my Lord Chief Justice Pratt are general enough to take in a particular Case, yet if that Case appears not to be within the Intent and Reason of the Law, we must construe it to be excluded. I know no Exception of ~~penal~~ criminal Laws from this general Rule. But to return to our present Subject.

The most general Opinion, as we have already observed, and, we may add, the best Opinion is, that, in every State, there ought to be a Power to pardon Offences. In the mildest Systems of which human Societies are capable, there will still exist a Necessity

— city

[1] Eden c. 25. p. 320.

-sely of this discretionary Power, founded in the possible Circumstances of every Conviction.

But where ought this most amiable Prerogative to be placed? Is it compatible with the Nature of every Species of Government. With Regard to both those Questions, different Opinions are entertained.

With Regard to the last, the learned Author of the Commentaries on the Laws of England declares his unqualified Sentiment — "In Democracies this Power of Pardon can never subsist: for there Nothing higher is acknowledged than the Magistrate, who administers the Laws: And it would be impolitic for the Power of judging and of pardoning to center in one and the same Person. This would oblige him, as the President Montesquieu observes, very often to contradict himself, to make and to unmake his Decisions: It would tend to confound all Ideas of Right among the Mass of the People; as they would find it difficult to

tell

+ 4. bl. 389–391.

till, whether a Prisoner were discharged by his Innocence, or obtained a Pardon through Favour. In Holland, therefore, if there be no Stadtholder, there is no Power of pardoning lodged in any other Member of the State. But, in Monarchies, the King acts in a superior Sphere; and though he regulates the whole Government as the first Mover, yet he does not appear in any of the disagreeable or invidious Parts of it. Whenever the Nation sees him personally engaged, it is only in Works of Legislature, Magnificence or Compassion. The great Operation of his Sceptre is Mercy. His Power of Pardoning was said by our Saxon Ancestors to be deserved a lege sua dignitates; and it is declared in Parliament, by 27.th H. 8. c. 24. that no other Person hath Power to pardon or remit any Treason or Felonies whatsoever; but that the King hath the whole and sole Power thereof, united and knit to the Imperial Crown of this Realm

Permit

The King can pardon after the Impeachment is determined. 4. Bl. 392.

Permit me to introduce here, what will be mentioned with
still more Propriety in another Place. For the Western
World, new and rich Discoveries in Jurisprudence have
been reserved. We have found, that, in order to arrive,
in this first of human Sciences, to a Point of Perfection,
hitherto unattained, one of the three ~~simple~~ Species
of Government, heretofore known in the World — ~~—~~
~~Despotism~~, the best, and the purest of the three — that, in
which the Supreme Power remains with the People at
large, is capable of being formed, arranged, proportioned
and organized in such a Manner as to exclude the
Inconveniences, and to secure the Advantages of all
the three. On the Basis of Goodness we have erected
the Pillars of Wisdom, of Dignity and of Strength.

By the Constitution of the United States, the
President has Power to grant Pardons, except — and the
same Exception is made in Great Britain — in Cases
of Impeachment.

The

The Constitution, too, of Pennsylvania, animated by the wise and powerful public Recommendation, conveyed, ~~to us~~ by ~~us~~ innumerable Channels, to the Convention, which proposed and framed it, that they should imitate, so far as it applies, the excellent Model exhibited in the Constitution of the United States — The Constitution of Pennsylvania vests in the Governour of that Commonwealth the Power of granting Pardons, except in Cases of Impeachment.

It is however, by no Means an unanimous Sentiment, if we collect the public Sentiments from the Constitutions of the different States in the Union, that the Power of pardoning ~~Offences~~ Criminals should be vested solely in their supreme executive Authority of the State.

By the Constitution of New York, the Governour, in Cases of Treason or Murder, can only suspend the Execution of the Sentence, until it shall be reported to the Legislature at their subsequent Meeting; and they

shall

+ s. 18.

= s. 7.

" s. 33. = bom!

s. 19.

shall either pardon, or direct the Execution of the Crimi-
-nal, or grant a further Reprieve.

In the State of Delaware, the Governour possesses the Power of granting Pardons, except where the Law shall otherwise direct. A similar legislative Control is im-
-posed on the Governours of Maryland, and Virginia and North Carolina by the Constitu-
-tions of those States

In the States of New Hampshire, Massachusetts and South Carolina, Pardons can be granted only after a Conviction.

A. ~~Is it the Intention of~~ Witnesses, who are well
acquainted with the ~~Party's~~ Prisoner's Hand swear, that they believe
a Paper in London to have been written by him;—
is this Testimony Evidence, in criminal Cases, to be
left to a Jury in England?

In a Lecture, which I delivered some Time ago, I had Occasion to mention a Kind of probable Evidence, by which we recognise the Identity of the same Thing, and the Diversity of Things, which are different — that this Kind of Evidence is of the greatest Consequence in the Affairs of Life — that, by it, the Identity of Persons and Things is determined in Courts of Justice — that, in acquiring and retaining and applying it, there is a wonderful Difference of Talents in different Men; some recollecting and distinguishing almost all the Facts they have ever seen; others being much more slow and much less retentive in the Powers of Recollection and Discrimination.

It cannot be shewn to be impossible that two Swords, two Horses or two Men may be so much alike as not to be distinguishable even by those, to whom they are best or most intimately known. But this never

never happens; or, at least, it happens so very seldom, that we immediately, and without any Doubt, recollect a Person ~~[illegible]~~ well known by us, when we perceive the Signs, by which we have been accustomed to distinguish him from every other Individual.

This Faculty of Discrimination may, in some Cases be improved to a very surprising Degree. It is said to be no uncommon Thing for a Shepherd, who has the Care of five hundred Sheep, to know every one of them distinctly by its Countenance. A Taylor will immediately distinguish a Piece of Work, which has been done in his Shop. The same ~~[illegible]~~ & discriminating Power is possessed, in an equal Degree, by the Shoemaker. Each discovers minute but, to him, satisfactory Marks, which enable him to distinguish what he has done, or even what has been done under his Direction and after his Manner, from Things of the same Kind, which have been done under the Management of others.

From a

A.

Handwriting may be proved in four different Ways. 1. By the Testimony of those who swear that they saw the very Instrument in Question, written by the Person, whose Handwriting it is supposed to be. 2. By the Testimony of those who did not see that Person write the Instrument in Question; but who have seen him write other Pieces, and hence attest that they are satisfied that the Instrument in Question is written by him. 3. By the Testimony of expert Judges of Writing, who, after having compared two Instruments, declare that they appear to them to be of the same Handwriting. 4. By a Comparison of the same Nature made by the Jury. Em. Jur. V. 2. P. 1. p. 85.

On discriminating Powers and Properties of this Kind depends that Species of Evidence, which arises from the Similitude of Handwriting, and which is of so great Moment in the Transaction of Business, especially of commercial Business. All the Arts of the most skilful and experienced Forgery have not been sufficient to shake the Confidence which is placed in this Kind of Evidence, both in the Affairs of Life, and in the Administration of Justice. To prove the Handwriting of a Person is the Practice of every Day. A.

In general, the Witness, who is called to prove Handwriting of the second Way it, must have seen the Person write: But this Circumstance is waived, when, from the Nature or Distance of the Transaction, a Compliance with it cannot be reasonably expected; as, for Instance, when the Person, whose Handwriting is to be proved, resides in a foreign Country; or when the Instrument is so old

that

A.

by the Writers on the English Law; though, among the Civil
~~the~~ Source
-lians, it has been a ~~Matter~~ of much ~~Doubt and Differ-~~
~~-ence~~ Dispute and Difference of Sentiment. Ev. Jur. V. 2. P.
1. p. 86.

4. Bl. 351.

that one, who has seen or been acquainted with the Writer, cannot be found.

That Evidence arising from the Similitude of Handwriting is admissible in civil Cases, is universally allowed, But whether and how far it may be admitted in criminal Cases has, in England, been a Question of great Doubt and Importance.

From the Reversal of Colonel Sydney's Attainder by Act of Parliament in 1689, it may be collected, says Sir William Blackstone, that the mere Similitude of Handwriting in two Papers shewn to a Jury, without other concurrent Testimony, is no Evidence that both were written by the same Person.

The Circumstances of that very extraordinary Trial, to which the Author of the Commentaries alludes, and a Series of Decisions, which, in England, have followed the Act of Parliament just now mentioned, deserve the closest Attention of a Lawyer; for they will suggest some very useful Instruction concerning the

Species

Species of Evidence which is of so much practical Consequence in every Society, in which Arts or Business have made any considerable Progress.

On the Trial of Mr Sidney, the Attorney General produced some Papers, which he alleged to be of the Handwriting of the Prisoner. Sir Philip Lloyd, who seized his Papers under a Warrant from the Secretary by the King and Council, swore that he verily believed the Papers produced to be some of a great many, which he found upon a Table, where he supposed, the Prisoner usually wrote.

To Mr Shepherd, another Witness, the Papers, in particular, Exception were shewn; and he was asked if they were the Prisoners Handwriting. He said he believed them all to be his Hand. On being asked how he became acquainted with his Hand, he answered, that he had seen him write the Indorsement upon several Bills of Exchange. To the same Point, two other Witnesses were cal-led, one of whom had never seen him write, but had paid some Notes with his Indorsement upon them, and was once called to Account for Mispayment; and the other of whom had seen him write only once, but had seen his Indorse-

ment

† Dr Geo. Jeffries

ment upon Bills. When the second Witness was sworn, the Prisoner said to the Lord Chief Justice — My Lord, I desire you would please to consider this, that Similitude of Hands can be no Evidence. To this the Chief Justice answered — Reserve yourself till anon, and make all the advantageous Remarks that you can.

In his Defence, Mr Sidney says — the Witness concerning the Papers, 'tis only a Similitude of Hands, which is just Nothing. In my Lady Carr's Case it was resolved to extend to no criminal Cases; if not to any, then not to the greatest, the most capital.

Sir John Hawles, in his Remarks on the Trial, says that the Case of Lady Carr was well cited, against whom there was an Indictment or Information of Perjury, in which it was resolved, that Comparison of Hands was no Evidence in any criminal Prosecution.

The Solicitor General, in his Reply to Mr Sidney's Defence says — we prove'd Mr. Sidney's Hand, and that by as much Proof as the Thing is capable of; such a Proof as

" 3. A. Tr. 815.

+ 2. Han. 431.

as in all Cases hath been allowed; and that is, for Men to come that know and are acquainted with the Handwriting, and swear they know his Hand Writing, and they believe this to be his Hand.

Sergeant Hawkins, in his Pleas of the Crown, observes that the Parliament having declared an Opinion in the Reversal of Algernoon Sidney's Attainder, that the Comparison of Hands is no Evidence of a Man's Handwriting in criminal Cases; it seems to have been generally holden since that Time, that it is not Evidence in any criminal Case, whether capital or not capital.

In the Case of the King v Crosby, tried in the eleventh Year of King William, the principal Matter charged was the Writing of certain treasonable Papers. There the King's Counsel endeavoured to prove by Comparison of Hands, having no other Evidence. The Prisoner produced the Copy of the Act of Parliament for the Reversal of the Attainder of Mr Sidney, in which it was declar-

ed

+ L. R. 40

ed that the Comparison of Hands is not legal Evidence
Upon which the Jury found the Prisoner not guilty.

It is remarkable, that there is a considerable Difference in the Account given, as beforementioned, of the Act of Parliament reversing Col. Sidney's Attainder. Sir William Blackstone says, that it may be collected from it, that the mere Similitude of Handwriting in two Papers is no Evidence that both were written by the same Person. Serjeant Hawkins informs us, that the Parliament declared an Opinion to this Purport. My Lord Raymond informs us, that Crosby produced a Copy of the Act, in which it was declared, that the Comparison of Hands is not legal Evidence. This Form of Expression seems to denote Authority as well as Opinion.

In Disquisitions of this Nature, it is always best to go immediately, when we can go, to the Fountain Head.

Head. But unfortunately this, in the present Instance, is not in our Power. The Act in Question, being a private one, is not printed, so far as I can find, in any Edition of the Statutes at large.

In the highly celebrated Case of Christopher Layer, however, the Act was referred to on both Sides: And each Side was possessed of an examined or an attested Copy of it. The Account given of it at that Trial — and it is the most particular and satisfactory Account of it, which we can command — is as follows.

The Act recites, that Col. Sydney, by Means of an illegal Return of the Jury, by denying him his lawful Challenges to the Jurymen, for Want of Freehold, and without sufficient legal Evidence of any Treason committed by him, there being produced a Paper found in his Closet, supposed to be his Handwriting, which was not proved by any one Witness to be written by him; but the Jury was directed to believe it by comparing it

+C. A. L. 279.

it with other Writings of his: And besides that Paper so produced, there was but one Witness to prove any Matter against him, and by a partial and unjust Construction of the Statutes of Treason, was most unjustly attainted. And then the Act reverses the Attainder.

Between the Recital, as it is stated ~~by the~~ in Layer's Case, by the Attorney General in the Presence of the Prisoner and his Counsel, and the Account given of the Transaction in the State Trials, there is a most manifest and a most essential Variance.

In the Statute, it is mentioned, that the Handwriting was not proved by any one Witness to be written by Col. Sydney; but the Jury were directed to believe it by comparing it with other Writings of his.

The Account given in the State Trials mentions no other Papers as produced than those found in the Closet. The Witnesses swore to their Belief of his Handwriting from their Recollection of Instruments which they had

had seen him sign, or which, bearing his Name, had been paid, without any Objection being made against their Authenticity.

A. No Direction, as far as we can find in the State Trials, was given to the Jury to believe the Handwriting by comparing it with other Papers written by Col. Sidney.

In the Year 1690 — a very short Time after Col. Sydney's Attainder was reversed — the very same Kind of Evidence was given against the Lord Preston, which had been given against Col. Sydney. At the Lord Preston's Trial no fewer than six or seven of the Judges were present. Is it likely that they would have violated a parliamentary Declaration so recently made? Is it likely that so ~~[illegible]~~ flagrant a Violation would have passed without Animadversion?

In the Case of Francia, who was tried in 1716. In the Case of Layer, who was tried in 1722. In the Case

of

A.

The Conduct of the Court, particularly of the infamous ~~Chief~~ Jefferies, before whom Col. Sydney was tried, merits the warmest Indignation of every Friend to Truth ~~and Justice~~ and Liberty. But to the most abandoned of Characters, Jefferies is still due.

of Hungry. who was tried in 1758. the same Evidence was given, and ruled, after Argument, to be given, as in Algernoon Sidney's Case.

What are we to infer from all this? Either that the Recital of the Act of Parliament was founded on a Mis-information; or that a numerous Succession of Judges, many of them distinguished by their Talents, some of distinguished by their Integrity as well as by their Talents, have acted in contemned Disregard of that Act; or, in fine, that the Account given of Col. Sidney's Case in the State Trials is not a just and true Account.

The Resolution of this Question, concerning the Comparison of Hands is not merely a Matter of historical or speculative Curiosity: It involves, in it, practical Points of the most essential Importance. The Identity and Diversity of Handwriting, and the Belief arising from them, form, as we have seen

sun, the Foundation of Conduct in a very consider-
-able Part of the Business of Life.

Without Evidence arising from this Source,
how, it may be naturally asked, could the Forgery
of Handwriting be detected or proved or punished?

That Species of Forgery, which is most dangerous,
and which is most frequently committed, is done in
the Name, and by imitating the Handwriting of
another.

How, it may be asked, can such a Forgery be esta-
-blished, unless by Proof of Dissimilitude between the
counterfeit and the genuine Handwriting?

How, it may next be asked, can this Dissimilitude
be proved without involving, in it, the ~~———~~ Belief and
Conviction ~~of Similitude~~ arising from Similitude. How
can a Person declare that one Thing is not another, un-
-less he knows which is one, and which is the other?

How

† 3. Jun. 169. Fol. 117.

How can they, in most Instances, be known but by the Comparison of Handwriting? How, in fine, can Forgery be proved or punished if, in Criminal Cases, the Comparison of Hands, is no Evidence?

I give no Opinion concerning these Questions: But they certainly merit Consideration; and are susceptible of much ingenious Discussion, which, I am confident, they will receive in the Course of the Debate, the Parts in which I now assign.

On a Digest of Laws.

{ See on this Subject
" Question No 1.

That a proper Digest of her Laws would be of great public Advantage to Pennsylvania is universally agreed.

It is generally agreed, that, in the present uncertain, confused and imperfect State of her legal System, such a Measure is become even necessary, in a great Degree, if not altogether.

That a Digest of that System cannot be prepared by a Committee consisting of Members of either House of Assembly, in the ordinary Way, must be evident to every one, who can judge and reflect on the Subject.

If, therefore, this Business, important in the Opinion of all, and necessary in the Opinion of many, is to be done; it must be done by some Person or Persons especially empowered for that Purpose.

Three Questions now arise —

1. From whom should this Power originate?

2. In what Manner should it be given?

3. Who shall name the Person to be empowered?

1. If we would think and speak accurately on this Subject, we must consider the whole Digest proposed as forming a single Bill, to be reported to one House, or separately to each House; and liable to be rejected, altered, or approved, in the Whole, and in any Part, by each House separately: For, under the Constitution, the two Houses cannot take a joint Resolution, nor give a joint Vote, concerning any Bill.

One Result of this accurate View of the Matter is, that the Authority to prepare a Bill for one House should be given by that House; and the Authority to prepare a Bill for each House separately should be given by each House separately: For the same Bill, under the Exception which will be just now mentioned, may be taken up separately in each House.

Another

Another Result of the accurate View of the Matter is, that, with Regard to a complete Digest of the Laws, the Authority of the House of Representatives alone can empower any Person to prepare the Whole. In that House "all Bills for raising Revenue shall originate." It would be incongruous to suppose, that the Senate could give Authority to prepare a Part of a Bill, which Part, by the Constitution, cannot originate in the Senate.

The Result of the whole, on the first Question, is, that the Power to prepare that Part of the System necessary for raising a Revenue, must, in strict Propriety, be given by the House of Representatives solely; and that the Power to prepare every other Part of it may be given by either House singly, or by each House separately.

As to the second Question —

2. The Authority to prepare a Digest may be given, though not with the strictest Propriety, by a Law.

If

If given by a Law, the Authority, though expressed to be given jointly, would, by a liberal and equitable Construction, be deemed as given separately; each House being supposed to confer that Part, which it has a Power to confer. Thus, under a Law, the Authority to prepare every Part of the System, except that, which is necessary for raising a Revenue, would originate from each House separately; and the Authority to prepare that Part, which is necessary for raising a Revenue, would originate from the House of Representatives solely.

If Propriety, however, is strictly attended to; it seems, that, with Regard to every Part of the System, except that, which is necessary for raising a Revenue, the Power may be given by the Resolution of either House singly, or by the Resolution of each House separately; and that, with Regard to the Part, which is necessa-

-ry for raising a Revenue, the Power must be given by a Resolution of the House of Representatives solely.

3. As to the third Question — It has been suggested by some, that the Person empowered to prepare a Digest of the Laws must, by the Constitution, be named and appointed by the Governour.

By the 8th Section of the 3d Article of the Constitution, the Governour "shall appoint all Officers, whose Offices are established by the Constitution, or shall be established by Law, and whose Appointments are not therein otherwise provided for."

If the Mode, which we have recommended by the Principle of strict Propriety, is adopted; the most remote Argument cannot be urged in Favour of an Appointment by the Governour; no Office being established by the Constitution, or by Law.

But

But is it in Contemplation to establish an Office for a Digest of the Laws of Pennsylvania? If so; by what Tenure shall the Office be held? — during good Behaviour? — or at Pleasure? If at Pleasure; at whose Pleasure? — the Governours?

That the executive Magistrate should possess over the Legislature, a qualified Negative, after Debate, is undoubtedly a sound Principle in Government, and is warranted by the Constitution of Pennsylvania. But that, before Debate, any Bill, much more a Bill, comprehending a Digest of the whole Statute Law, can be prepared for the Consideration of the Legislature, only by an Officer appointed, and appointed, perhaps, at Pleasure, by the Governour, is a Doctrine not warranted by the Constitution of Pennsylvania, nor would it be a sound Principle in any Government whatever.

"The

"The executive Power, says Montesquieu, should have a Share in the Legislature, by the Power of rejecting, otherwise it would soon be stripped of its Prerogatives. But if it were to have a Share in the Legislature, by the Power of enacting, Liberty would be lost."

"The English Parliament, says De Lolme, have not only secured to themselves a Right of proposing Laws, but they have also prevailed on the executive Power to renounce all Claim to the same. It is even a constant Rule, that the King can make no Amendments to the Bills proposed by the two Houses; but is merely to accept or reject them: A Provision this, which, if we pay a little Attention to the Subject, we shall find to have been necessary for completely securing the Freedom and Regularity of their Deliberations."

By

+ Mont. b. 18. c. 6. p. 227.

" De Lolme. 192.

By the Resolution empowering Mr Wilson to prepare a Digest, it appears most clearly, that the House of Representatives had not the least Intention to establish an Office for this Purpose. The Authority given is given to Mr Wilson personally and solely, without including the most distant Intimation of other Succession or Representation. Was Mr Wilson to decline the Exercise of the personal Trust and Power reposed in him, that Trust and Power could not, even by the House of Representatives, be devolved on any other Person. On any other Person, indeed, that House could, by another Resolution, confer a new Trust and Power of the same Nature.

An Office, like a Chair, may exist while no one fills it; and, by the Constitution, the Governor supplies the Vacancy; but before his constitute:

— onal

said Authority can have any Operation, a vacant

subscribing Office must be found.

Friday 1st April 1791.

On the Question — Shoulds a Provision — that Emigration shall not be prohibited — form a Part of the bond of a Slave?

M.r H. Clymer Pro

Vall. Ball of Empire rolls Westward

1. As a Matter of Right in the Individual
2. As a Matter of Policy in the State

I. Advantage may indeed or Necessity may draw one from the State in which he was born

Etc.

II. Obj. It tends to lessen the Population of the Country. Was they born; the Objection should not be sufficient — But the Objection is unfounded.

Suppose such a Regulation in private Societies

We should lose more by the Prohibition — That Company is most sought, which is freest.

Policy

Why Nex equal &c — may not be annulled for Crimes.

Lycurgus Sen — Sax

M.

Mr. Mc Clymer —

The social Compact is indissoluble as to Time — therefore cannot be broken at Pleasure.

This Compact is a personal one.

It can be released only by the Consent of the Society.

Persons, who emigrate, carry the Rights of Indigenous with them; why not their Debts?

One, by his Offences, may invalidate the State in Defence: Shall he then be permitted to leave it?

So by his Vote.

The social Compact should be reciprocal.

Vat.

The Manner in which Writers mention this Subject — They say — the Sovereign should not refuse — not that the Indigen has a Right to go.

The Right of Emigration may produce a Diminution.

There are, at least some Cases, in which Emigration may be prohibited.

Gro. Vat. — Suppose a determinate Age of Emigration

Mr.

Mr Gibson Pro.

1. Advantages of this Regulation
2. Disadvantages of the contrary

As all may change so each may leave the Constitution, when Happiness requires it.

This Regulation would invite Citizens

It will be a Stimulus on the Legislature to induce them Citizens to stay, and others to come.

Emigration is like letting Blood.

——— It will prevent Oppression of a Minority

Mr. W. Morris —

If this Regulation is not made in the Const— you do not necessarily prohibit Emigration?

The sentiments of Hobbes and Aristotle

Puff. 645.

What would be the Use of the social Compact if every one could go away when he pleases.

There

There ought to be no Provision in the Constitution contrary to the social Compact —

This Country is not yet peopled — We should therefore encourage Emigration to us, but prohibit it from us.

Policy might induce the Legislature to suspend the Practice of Prohibition: It cannot shake the Right.

The Power of prohibiting should be confined, added, to the Legislature.

Suppose a Country involved in War and Debt: — Should not every one contribute his Money & Services?

Constitutions should not be lightly altered. When will you stop?

This Prohibition might be improper in a Monarchy, but cannot in a Republic

16th April 1791

On the Question concerning the Proof of Handwriting

M'Cready Pro. Importance of Evidence — Nature of Evid. Circumstantial Evidence

3. Ways of proving Handwriting

Even in Sidney's Case, the Evid. did not decide

The Meaning of the Return that Comp. of Hands is not Evid

Sid. 418. Lady Carr's Case

Sidney's Case

8 St. Tr. Harg. 472. the Journal of Sydney's Attainder.

The seven Bishops.

Crosby's Case. Skin. 579 L.R. 39.

La Pavlois Case

Francis Case

Layer's Case

Henzey's Case.

2. Haw. 431. 4. Bl. 358.

Buller. 236.

M'Evans

Mr Evans. Cont. Achilles —

The Distinction between civil and criminal Cases.

Kenzey's Case — found in the Post of the Law

The Reversal of Sydney's Attainder

2. Hale. 431. Show. 538. 12 Mod. 72.

Reason as well as Authority is in our Favour.

In Criminal Cases the Presumption arising from Similitude of Hands is destroyed by the Presumption in Favour of Evidence.

All Men write after one Model

Mr Read — Pros. Cont. Evid — positive and presumptive

1. More atrocious Crime — the stronger Evidence — to prove Forfeiture

2. Pres. Evid. cautiously to be received.

3. Dependent Proofs are not in Proportion 6 Mod.

Kenzey's Case

3. Mod. 116

2. Sid. 419.
Gilb. 254

Analyse this Kind of Testimony

There is no penal Restraint on this Kind of Testimony

Mr

40. Mr Condy in Reply

Questions N.° 4.